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6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA  
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10 DERICA L. STOECKER,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL<sup>1</sup>, Acting  
14 Commissioner of Social Security,

15 Defendant.

Case No. CV 13-8892-KK

ORDER GRANTING MOTION FOR  
ATTORNEY FEES PURSUANT TO  
42 U.S.C. § 406(B)

16  
17 I.

18 INTRODUCTION

19 Plaintiff Derica L. Stoecker's ("Plaintiff's") counsel, Rebecca C. Padilla of  
20 Potter, Cohen & Samulon ("Counsel"), filed a Motion for Attorney's Fees  
21 Pursuant to 42 U.S.C. § 406(b) ("Motion"). The Motion seeks an award in the  
22 amount of \$12,221.00 for representing Plaintiff in an action to retain her  
23 Supplemental Security Income ("SSI"), with a refund to Plaintiff of \$4,000.00 for  
24 the Equal Access to Justice Act ("EAJA") fees previously awarded.  
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28 <sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of the Social Security  
Administration. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure,  
the Court substitutes Nancy A. Berryhill as Defendant in the instant case.

1 The parties have consented to the jurisdiction of the undersigned United  
2 States Magistrate Judge, pursuant to 28 U.S.C. § 636(c). For the reasons stated  
3 below, the Court grants the Motion.

## 4 II.

### 5 RELEVANT BACKGROUND

6 On December 11, 2013, Plaintiff filed the complaint in this action. See ECF  
7 Docket No. (“Dkt.”) 3, Compl. Plaintiff alleged defendant Carolyn W. Colvin  
8 (“Defendant”) improperly denied Plaintiff SSI benefits. Id. at 2. On October 2,  
9 2014, the Court found Defendant erred in denying Plaintiff benefits, and entered  
10 Judgment reversing and remanding the case to Defendant for further  
11 administrative proceedings. Dkt. 22, Judgment.

12 On December 2, 2014, the Court awarded Counsel EAJA fees in the amount  
13 of \$4,000.00. Dkt. 24, Order Granting EAJA Fees.

14 On June 5, 2017, pursuant to 42 U.S.C. § 406(b), Counsel filed the instant  
15 Motion seeking the amount of \$12,221.00 for representing Plaintiff in the  
16 underlying proceedings before the Court. Dkt. 25. Counsel states, “Upon receipt  
17 of payment pursuant to this motion, Plaintiff’s counsel will refund to Plaintiff  
18 whichever is less, the award made pursuant to this motion or the award made  
19 pursuant to the Equal Access to Justice Act.” Id. at 2. According to Counsel,  
20 24.75 hours of attorney time were expended on Plaintiff’s case. Itemized Hours,  
21 Dkt. 25, Ex. 5. Counsel, therefore, seeks compensation pursuant to a contingency  
22 fee agreement stating Counsel’s attorney’s fees “shall be the lesser of: (1) 25% of all  
23 past due benefits arising out of the claim, including dependents’ benefits, or (2) the  
24 maximum allowed by section 206(a)(2)(A) of the Social Security Act (which is  
25 currently \$6,000 but can be increased by Federal Government).” Contingency Fee  
26 Agreement, Dkt. 25, Ex. 1.

27 On June 5, 2017, Plaintiff was served with the Motion and informed she had  
28 a right to file a response to the Motion. Dkt. 25, Mot. at 2; Dkt. 27. Plaintiff failed

1 to file a timely response. On June 22, 2017, Defendant filed a Non-Opposition to  
2 the Motion stating she “takes no position on the reasonableness of the [Motion’s]  
3 request.” Dkt. 30, Non-Opposition at 4. Thus, the Court deems this matter  
4 submitted.

### 5 III.

### 6 DISCUSSION

#### 7 A. APPLICABLE LAW

8 42 U.S.C. § 406(b) (“Section 406(b)”) provides, in part:

9 Whenever a court renders a judgment favorable to a claimant under  
10 this subchapter who was represented before the court by an attorney,  
11 the court may determine and allow as part of its judgment a reasonable  
12 fee for such representation, not in excess of 25 percent of the total of  
13 the past-due benefits to which the claimant is entitled by reason of  
14 such judgment, and the Commissioner of Social Security may . . .  
15 certify the amount of such fee for payment to such attorney out of, and  
16 not in addition to, the amount of such past-due benefits.

17 42 U.S.C. § 406(b)(1)(A). Thus, “a prevailing [disability] claimant’s [attorney’s]  
18 fees are payable only out of the benefits recovered; in amount, such fees may not  
19 exceed 25 percent of past-due benefits.” Gisbrecht v. Barnhart, 535 U.S. 789, 792,  
20 122 S. Ct. 1817, 152 L. Ed. 2d 996 (2002).

21 Where a claimant entered into a contingent fee agreement with counsel, a  
22 court must apply Section 406(b) “to control, not to displace, fee agreements  
23 between Social Security benefits claimants and their counsel.” Id. at 793. A court  
24 should not use a “lodestar method,” under which a district court “determines a  
25 reasonable fee by multiplying the reasonable hourly rate by the number of hours  
26 reasonably expended on the case.” Crawford v. Astrue, 586 F.3d 1142, 1148 (9th  
27 Cir. 2009) (en banc) (citation omitted). Rather, where the claimant and counsel  
28 entered into a lawful contingent fee agreement, courts that use the “lodestar”

1 method as the starting point to determine the reasonableness of fees requested  
2 under Section 406(b) improperly “reject the primacy of lawful attorney-client fee  
3 agreements.” Gisbrecht, 535 U.S. at 793. Thus, courts should not apply lodestar  
4 rules in cases where the claimant and counsel reached a contingent fee agreement  
5 because:

6 [t]he lodestar method under-compensates attorneys for the risk they  
7 assume in representing [social security] claimants and ordinarily  
8 produces remarkably smaller fees than would be produced by starting  
9 with the contingent-fee agreement. A district court’s use of the  
10 lodestar to determine a reasonable fee thus ultimately works to the  
11 disadvantage of [social security] claimants who need counsel to  
12 recover any past-due benefits at all.

13 Crawford, 586 F.3d at 1149.

14 However, even in contingency fee cases, a court has “an affirmative duty to  
15 assure that the reasonableness of the fee [asserted by counsel] is established.” Id.  
16 The court must examine “whether the amount need be reduced, not whether the  
17 lodestar amount should be enhanced.” Id. The court may consider factors such as  
18 the character of the representation, the results achieved, the ratio between the  
19 amount of any benefits awarded and the time expended, and any undue delay  
20 attributable to counsel that caused an accumulation of back benefits in determining  
21 whether a lawful contingent fee agreement is reasonable. See Gisbrecht, 535 U.S.  
22 at 808; Crawford, 586 F.3d at 1151.

## 23 **B. ANALYSIS**

24 Here, Counsel seeks a reasonable fee under Section 406(b). Plaintiff  
25 retained Counsel to represent her in federal court in her appeal from the  
26 administrative denial of benefits, and agreed to pay Counsel a contingency fee of  
27 twenty-five percent of any past due benefits obtained. See Contingency Fee  
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1 Agreement, Dkt. 25, Ex. 1. Consideration of the factors set forth in Gisbrecht and  
2 Crawford warrants no reduction of the fee Counsel seeks.

3 The record discloses no issue regarding the quality or efficiency of Counsel's  
4 representation before this Court, or any misconduct or delay by Counsel. Counsel  
5 obtained a favorable outcome for Plaintiff, ultimately resulting in a remand for  
6 further administrative proceedings and an award of past due benefits. See Dkt. 22,  
7 Judgment; Notice of Award, Dkt. 25, Ex. 4. Further, the 24.75 hours expended to  
8 litigate this case was reasonable and within the approved range for social security  
9 disability cases. See Patterson v. Apfel, 99 F. Supp. 2d 1212, 1214 & n.2 (C.D. Cal.  
10 2000) (noting that "a survey of several dozen cases in which attorney's fees were  
11 awarded in social security cases suggests that the 33.75 hours spent by plaintiff's  
12 counsel falls within the approved range").

13 In addition, a fee of \$12,221.00 based on 24.75 hours of attorney time is  
14 reasonable. See Itemized Hours, Dkt. 25, Ex. 5. The Court finds Counsel's  
15 effective hourly rate of approximately \$493.77 reasonable under the circumstances.  
16 Dkt. 25, Mem. of Points and Authorities, at 7; see Villa v. Astrue, 2010 WL 118454,  
17 at \*1-2 (E.D. Cal. Jan. 7, 2010) (approving Section 406(b) fees exceeding \$1,000.00  
18 per hour, and noting "[r]educing [Section] 406(b) fees after Crawford is a dicey  
19 business"). Further, post-Gisbrecht decisions have approved contingent fee  
20 agreements yielding hourly rates greater than the rate Counsel seeks. See, e.g.,  
21 Daniel v. Astrue, 2009 WL 1941632, at \*2-3 (C.D. Cal. July 2, 2009) (approving  
22 fees amounting to \$1,491.25 per hour). Hence, in light of the hours Counsel  
23 expended, the Section 406(b) fee award amount Counsel requests does not  
24 represent an unfair windfall to Counsel.

25 Finally, nothing in the record suggests any overreaching in the making of the  
26 fee agreement or any impropriety on the part of Counsel in representing Plaintiff.  
27 Counsel assumed the risk of nonpayment inherent in a contingency agreement and  
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1 Counsel's efforts proved successful for Plaintiff. Accordingly, the Court finds the  
2 Section 406(b) fees Counsel requests reasonable.

3 **IV.**

4 **ORDER**

5 Based on the foregoing, **IT IS HEREBY ORDERED:** (1) Counsel's Motion  
6 for Attorney Fees Pursuant to 42 U.S.C. § 406(b) is **GRANTED**; and (2)  
7 Defendant is directed to pay Counsel the sum of \$12,221.00 with a reimbursement  
8 to Plaintiff for EAJA fees previously awarded in the amount of  
9 \$4,000.

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11 Dated: June 26, 2017



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12 HONORABLE KENLY KIYA KATO  
13 United States Magistrate Judge  
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